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RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC 0064  
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State for EAP/CM; EEB - JBonilla, JSpeck, JUrban, TMcGowan  
State for INL - JVigil  
USTR for China Office - KAlvarez, AWinter; IPR Office - RBae; and  
OCG - SMcCoy  
Commerce for National Coordinator for IPR Enforcement  
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DHS/CBP for IPR Rights Branch - GMCCray, PPizzeck  
ITC for LLevine, LSchlitt  
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SUBJECT: South China IPR: Enforcement Still the Problem, High-Level  
U.S. Engagement Remains Critical

REF: A) 2009 GUANGZHOU 619, B) 2009 GUANGZHOU 503, C) 2009 GUANGZHOU  
320, D) 2008 GUANGZHOU 720

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¶1. (SBU) Summary: Rights holders came to the Consul General's IPR Roundtable on January 28 and 29, with a clear message: Problems remain serious and continued high-level U.S. engagement is critical to improving the situation. Representatives of 39 south China-based rights holders and law firms praised extensive U.S. Government support and participation in last October's Pearl River Delta Forum on Innovation and Intellectual Property, but wasted no time in asking for more engagement in 2010 to keep up momentum that the conference generated. Rights holders said the scale of south China IPR problems had not decreased in the last two years, with criminal penalties for IP infringement seldom imposed and administrative and civil enforcement failing to deter infringement activity. Rights holders also used the opportunity to exchange information, and suggested the need for a more coordinated approach to detect repeat offenders and locations with high concentrations of infringement activities. End summary.

Keep Up the Momentum

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¶2. (SBU) Attendance set a record at the Consul General's IPR Roundtable, which was held over two sessions on January 28 and 29, 2010, to maximize participation of south China-based rights holders. Almost 40 participants representing individual companies, law firms and industry associations joined the discussion at the U.S. Consulate in Guangzhou. Rights holders told the CG that participation of Commerce Secretary Gary Locke, Ambassador Jon Huntsman, and Deputy Director of the Patent and Trademark Office Sharon Barner at the Pearl River Delta Forum on Innovation and Intellectual Property on October 27, 2009 in Guangzhou set the stage for engaging Guangdong provincial leaders and sent a powerful signal of the U.S. Government's commitment to this issue in south China (ref A).

¶3. (SBU) Participants said that 2010 is an opportunity to build on the momentum created by last fall's IP Forum and offered two specific ideas for high-level USG engagement with provincial and local authorities. First, rights holders voiced concern that they had not been able to reconnect with Guangdong Party Secretary Wang Yang after the conference, which many see as critical for creating the political conditions that encourage working-level local officials to take meaningful action against infringers. Rights holders requested that Secretary Locke send Wang a letter referring to the success of last fall's conference and requesting new action from provincial and local authorities. The second idea from rights holders was for Ambassador Huntsman host one or more large-scale IPR activities, focusing on Beijing and key cities such as Shenzhen, in order to bring together business leaders and government officials from both sides to jointly address IPR concerns.

¶4. (SBU) In addition to rights holders' two specific

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recommendations, participants in the CG's roundtable also called on the U.S. Government to continue capacity building and other engagement efforts in south China, including dispatching more high-level visitors to personally meet with provincial and local officials. Rights holders said that too often, efforts to engage in south China are short-lived or characterized as one-off meetings, which makes it easier for local officials to put on a good face for the visit and then revert to unhelpful postures after U.S. officials depart. More frequent visits would show a pattern of commitment that could better influence local political will and improve protection for IPR in the province that many American business leaders still call the infringement "heart of darkness."

Enforcement Still Key  
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¶5. (SBU) Leading a chorus of similar feedback about local IPR conditions, the representative of a prominent American cosmetics firm told the CG that 90% of his firm's worldwide counterfeiting problems can be traced to Guangdong Province, with Guangzhou's Baiyun District and Shantou City representing the largest problem areas for production of counterfeit goods. Other health and beauty products companies offered similar views of the depth and breadth of south-China infringement problems, saying that criminal cases, which they said are the only "impact cases" that help improve local conditions, are too few to measurably improve local conditions (ref C). Rights holders from all industries said that administrative and civil enforcement have been frequently used to penalize infringers, but the fines and other minor penalties are generally seen as the cost of doing business rather than a deterrent from engaging in illicit activity (ref B). Criticisms included inconsistent application of existing IPR-related laws, unpredictable valuation methodologies for determining criminal prosecution, and allegations of non-transparent and protectionist behavior at each level of China's justice system. In addition, participants faulted the civil-enforcement avenue as being too expensive, cumbersome and slow.

¶6. (SBU) Several rights holders also complained of being unsure whether goods seized during administrative enforcement actions were actually destroyed as prescribed under Chinese law. Many suspect

that infringing goods were being re-introduced into the commercial stream as rights holders had no real ability to hold administrative agencies accountable for destruction of infringing goods, or to verify whether the goods had been destroyed. One participant additionally voiced a long-standing complaint that enforcement agencies do not destroy the machinery used for producing counterfeit goods. This shortcoming is another example of the failure of Chinese legal and regulatory conditions to fully address infringement concerns with an eye towards prevention and deterrence of repeat offenders.

#### New Frontiers of Infringement

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17. (SBU) Rights holders told the CG that a rapidly expanding delivery channel for counterfeit goods is express-mail and package-delivery services, in addition to more traditional smuggling via large ocean-going cargo containers. The shift means that infringers are able to transport their goods more quickly to consumers, and exploit weaknesses in Customs and other traditional enforcement approaches. Representatives of major American pharmaceutical companies and sporting-goods firms said this threat to their brands and to the public in the form of dangerous and sub-standard counterfeit goods cannot be ignored. Rights holders said that China Customs led a special enforcement campaign in 2008 that was very effective at seizing thousands of illicit parcels sent from the Shanghai area. However, the illicit trade quickly returned to normal after the six-month campaign ended. Participants voiced their desire for more sustained Chinese efforts to police this delivery channel, and to require positive ID checks for all parcels sent through express-mail and package-delivery services in the country to help investigators effectively address illicit activity.

18. (SBU) Another rapidly growing tactic is internet-based sales of counterfeit goods, in addition to the long-standing problem of on-line piracy and illegal downloading of digital content. On-line sellers of illicit goods utilize express-mail and package-delivery services, most often sending the packages using untraceable false names and addresses. Victims of both types of on-line IP infringement told the CG that procedures for rights holders to have local authorities shut down infringing websites and listings at major on-line marketplaces, such as Alibaba and Taobao, have improved in the last year or two. However, the procedures remain too cumbersome and slow to stem the growth in internet-based infringement activities. One rights holder cited an internal study from the fashion industry, stating that recidivism among on-line infringers was estimated at 70-80%. He blamed the high rate on the difficulty in shutting down the infringing websites, and the relative ease with which infringers change registration names and then re-list infringing products immediately following initial efforts to close them down.

#### Innovations in Brand Protection

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19. (SBU) Participants suggested new cooperative approaches to help address widespread problems faced by many rights holders. One idea was to create a database or other information system using location and organization information about known or suspected infringers. Several rights holders said that repeat infringers were common, and geographic locations could be traced if details about enforcement raids and other investigations could be shared and aggregated into a useful tool for rights holders. A related idea was to organize meetings of rights holders' enforcement and brand-protection personnel to promote exchange of detailed enforcement information and facilitate communication. Pursuing repeat offenders might be an effective way to also attract broader support from local officials

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who often lack personnel and resources to pursue every IPR complaint.

¶10. (SBU) Participants in the Consul General's roundtable expressed appreciation that the Consulate invited participation from the Consulates of the United Kingdom, France, Canada and Japan for the first time. Economic and trade officers from each country joined IP-related discussions and described IPR problems facing their firms in south China. Rights holders also discussed the need for increased engagement with Chinese rights holders, both among the private sector, as well as among foreign governments and local firms. One novel idea for building consensus on IPR problems and solutions was to organize or sponsor joint- or third-party studies of the problem in China, or of its impact on external markets such as certain African countries where some experts believe that as many as 30% of all consumer products are counterfeit items exported from China. Participants agreed that the scale of IPR problems is so great that no one company, industry, or firm is unique in its suffering, but the challenges are central to all innovators and can only be solved through concerted joint effort.

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